

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE JOINT APPLICATION)
OF VERIZON DELAWARE INC. (F/K/A BELL)
ATLANTIC-DELAWARE, INC.), AND INTERMEDIA)
COMMUNICATIONS, INC., FOR APPROVAL OF AN) PSC DOCKET NO. 97-101
INTERCONNECTION AGREEMENT PURSUANT TO)
SECTION 252(e) OF THE TELECOMMUNICATIONS)
ACT OF 1996 (FILED MARCH 27, 1997))

FINDINGS, OPINION, AND ORDER NO. 6399

A. BACKGROUND

1. On March 27, 1997, Intermedia Communications, Inc. ("Intermedia"), and Verizon Delaware Inc. ("Verizon") (then named Bell Atlantic-Delaware, Inc.), asked the Commission to approve an interconnection agreement negotiated between the two parties. By PSC Order No. 4530 (June 17, 1997), the Commission approved the negotiated agreement under the standards set forth in 47 U.S.C. § 252(e)(2)(A). That Order required the parties to submit for approval any later changes to the approved agreement. Thereafter, the Commission accepted two negotiated amendments to that earlier approved Agreement. See PSC Order No. 4880 (Aug. 25, 1998).

2. On January 27, 2004, Verizon (on behalf of itself and Intermedia) filed an application asking the Commission to approve an Amendment No. 3 to the Interconnection Agreement between Verizon and Intermedia.

3. Pursuant to Guideline 30 of the Commission's "Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange Telecommunications Carriers" (as revised effective May 10, 2001), notice of the filing of the Amendment was posted on the Commission's website.

4. Staff has now reported that Intermedia no longer holds a Certificate of Public Convenience and Necessity ("CPCN") to provide local exchange telecommunications services in this State. In fact, in 2002, Intermedia abandoned its earlier application to obtain such a Certificate. See PSC Order No. 5865 (Jan. 8, 2002).¹ The records of this Commission do not reflect that Intermedia has, since that time, sought to re-acquire or obtain a local exchange Certificate. Consequently, when the Commission sat to consider this matter at its meeting on April 20, 2004, the Staff recommended that the proposed Amendment not be approved, given Intermedia's long-standing decision not to seek the necessary Certificate to allow it to provide local exchange or exchange access services in Delaware.

B. FINDINGS AND OPINION

5. The Commission has the authority and jurisdiction to review the proposed Amendment to the interconnection agreement under 47 U.S.C. § 252(e)(1) and 26 Del. C. § 703(4).

6. The amendment proposed by Verizon and Intermedia is a negotiated one, and, thus, the standard of review, under 47 U.S.C. § 252(e)(2)(A), would normally be a lenient one: would the terms of the amendment discriminate against other carriers or would its implementation be against the public interest? Here, Intermedia's prior choice to forego obtaining a local exchange Certificate (with its apparent parallel

¹Intermedia continues to hold a CPCN to provide resold intrastate interexchange services within this State. Intermedia was originally granted a local exchange CPCN, on a conditional basis, in PSC Order No. 4541 (July 8, 1997).

business decision not to pursue local exchange or exchange access operations in Delaware) causes this Commission to reject this proposed Amendment.

7. The purpose of the interconnection agreement regime crafted by 47 U.S.C. § 252 is to implement the obligations imposed by 47 U.S.C. § 251. In turn, the § 251 obligations are directed at providing interconnection and access so that a new telecommunications provider can - if it chooses - offer local exchange or exchange access services.² Indeed, here the present Amendment focuses, in part, on "reciprocal compensation" obligations for exchanged traffic. That is an obligation of "local exchange carriers." 47 U.S.C. § 251(b)(5).

8. Two years ago, Intermedia, made the business decision not to pursue finally obtaining the required Certificate to allow it to offer local exchange or exchange access services in this State. Since that time, it apparently has made no effort to seek such a Certificate. Presumably, then, it does not have, nor does it now seek, Delaware local exchange customers.

9. In light of that, the Commission finds that it would not serve the "public interest" for the Commission to now spend its resources to approve (and later possibly superintend) the offered amendment that relates - as does the original agreement - to local exchange carrier obligations. Intermedia, lacking a local exchange Certificate, is not utilizing (and cannot utilize) the terms of the present interconnection agreement to provide retail local exchange or exchange access services within Delaware. Similarly, because Intermedia is not certificated,

²See, e.g., 47 U.S.C. § 251(c)(2)(A).

Verizon does not need the agreement, or the offered amendment, to ensure its subscribers are interconnected with Intermedia's non-existent subscribers. Consequently, the Commission finds it would not - in this context at this time - be consistent with the public interest to approve the proffered amendment. It is rejected under 47 U.S.C. § 252(e) (2) (A) (ii).

10. Of course, this rejection is not cast in stone. If Intermedia moves to obtain a local exchange (or exchange access) Certificate, then the Commission would surely entertain a renewed application to approve an interconnection agreement or amendment between Intermedia and Verizon.³ In such case, the agreement would have some purpose. Here, however, the Amendment being offered seeks to modify a contract that no one uses, or contemplates using, within this jurisdiction.⁴

11. The Commission realizes that this rejection decision comes belatedly. However, the deadlines under 47 U.S.C. § 252(c) (4) dictate the timing of this Order. If Verizon or Intermedia believe that the Commission is wrong in its analysis here, and that approval is indeed necessary or appropriate (despite Intermedia's lack of a local exchange Certificate), then either or both entities may move for reconsideration of this Order. In such motion, Verizon or Intermedia should outline what public purposes would be served by the Commission superintending an

³Presumably, at that time, Intermedia and Verizon could "walk into" Delaware (for Commission approval) an interconnection agreement they might be using in some other State.

⁴Indeed, by continuing to act on interconnection agreements where one carrier does not hold, or is not in the process of obtaining, a local exchange certificate, the Commission continues to create a "hybrid" form of utility; one that is not a "public utility" under state law (and, hence, not subject to state law obligations) but which asks for Commission "approval."

interconnection agreement when one party to that contract has abandoned any effort to obtain a local exchange Certificate allowing it to provide exchange or access services in Delaware.

12. Finally, along the same lines, the Commission directs Verizon and Intermedia to file memoranda within twenty days of this Order setting forth each carrier's views on whether the Commission should not declare the presently approved Intermedia/Verizon interconnection agreement (with its prior amendments) no longer operative on a going-forward basis due to Intermedia's lack of a local exchange Certificate.

Now, therefore, this 20th day of April, 2004, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, the proposed Amendment to the interconnection agreement between Verizon Delaware Inc. (f/k/a Bell Atlantic-Delaware, Inc.), and Intermedia Communications, Inc. (originally approved in PSC Order No. 4530 (June 17, 1997)) submitted by the carriers on January 27, 2004 is rejected under 47 U.S.C. § 252(e)(2)(A)(ii). Such amendment is not approved.

2. That, Verizon Delaware Inc., and Intermedia Communications, Inc., shall, within twenty days of this Order, file and serve memoranda setting forth that carrier's views why this Commission cannot, or should not, deem the previously approved interconnection agreement (with amendments) to no longer be in operative effect for Delaware so long as Intermedia Communications, Inc., does not hold a Certificate of Public Convenience and Necessity to provide local exchange or exchange access services in Delaware.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary

or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary